

Title	Unlawful Detainer Request to Set Case for Trial (approve new form UD-150)
Summary	A new unlawful detainer <i>Request to Set Case for Trial</i> form would (a) request that the case be set for trial and (b) confirm that the defendant is still in possession of the premises and therefore the case is entitled to preference in setting the trial.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, <a href="mailto:cara.vonk@jud.ca.gov">cara.vonk@jud.ca.gov</a>
Discussion	<p>Some courts have developed a local form to request that the court set a trial date in an unlawful detainer proceeding. Some local forms may be confusing to the parties because they contain technical language or request information that does not apply in an unlawful detainer case.</p> <p>Several courts and one forms publisher have requested that the Judicial Council develop an approved statewide form. An approved Judicial Council form could save time for the parties, clerks, and judges by avoiding unnecessary questions and delays.</p> <p>Code of Civil Procedure section 1170.5 provides that trial in an unlawful detainer case “shall be held not later than the 20th day following the date that the request to set the time of trial is made.” The statute does not mention additional requirements for the request such as estimated length of length of trial, or filing of a counter memorandum if one of the parties does not agree with the request, or the time within which a counter memorandum must be filed.<sup>1</sup></p> <p>The title of the form, “Request to Set Case for Trial” follows closely the language in the statute, “request to set time of trial.”<sup>2</sup> The proposed form has provided a checkbox in the title to identify the party filing the request (plaintiff or defendant). The form could be used by any party who does not agree with another party’s request and wishes</p>

<sup>1</sup>Repealed municipal court rule 507(d) of the California Rules of Court provided for service of a counter memorandum within five days after service of the memorandum in an unlawful detainer case.

<sup>2</sup> The title of the form does not revert to “memorandum to set” or “at-issue memorandum,” because those titles are tied to a system and assumptions repealed as “inconsistent with modern case management principles under which courts have the main responsibility for managing cases and ensuring their timely disposition.” (See December 7, 2001, Judicial Council report, Tab 10, repealing rule 209, “civil cases at issue,” which governed the at-issue memorandum procedure in unified courts.

to file his or her own request, including jury trial, estimated time required for trial, and unacceptable trial dates, all items that have been incorporated in the proposed form. The individual court would determine how to assign a trial date.<sup>3</sup>

An item has been included to confirm that the defendant is still in possession of the premises and therefore the case is entitled to preference in setting the trial under Code of Civil Procedure section 1179a, or that the defendant has vacated the premises and the case is therefore not entitled to preference in setting the trial.

The same unlawful detainer assistant registration information that is on the unlawful detainer complaint (form 982.1(90)), unlawful detainer answer (form 982.1(95)), and request to enter default (form 982(a)(6)) has been included on this form. Business and Professions Code section 6408 requires that a registrant's information appear on any papers or documents prepared by the unlawful detainer assistant.

After reviewing local forms, the committee incorporated several items that might be useful to the parties in a boxed "Notice" at the bottom of the form. These include notice of the following: (a) the 20-day requirement for setting trial after the request is made, (b) the \$150 jury fee deposit required five days before trial, and (c) to check with the court about reporter and interpreter services and fees.

Although the form is currently proposed for optional use at the discretion of the parties, the committee is especially interested in receiving comment on whether the form should be mandatory, to promote uniform statewide practice in setting unlawful detainer cases for trial.

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Attachments

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<sup>3</sup> At least one court automatically assigns the trial date when the answer is filed. Then the procedure under rules 375, 375.1, and 379 of the California Rules of Court, could be used to reset the assigned trial date.

### **Rule 375. Motion or application for continuance of trial**

**(a) [Trial dates are firm]** To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain.

**(b) [Motion or application]** A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex parte application under rule 379, with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered.

**(c) [Grounds for continuance]** Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only upon an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:

- (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;
- (2) The unavailability of a party because of death, illness, or other excusable circumstances;
- (3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;
- (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;
- (5) The addition of a new party if:
  - (A) the new party has not had a reasonable opportunity to conduct discovery and prepare for trial, or
  - (B) the other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case;
- (6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or
- (7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.

**(d) [Other factors to be considered]** In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These

may include:

- (1) The proximity of the trial date;
- (2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;
- (3) The length of the continuance requested;
- (4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;
- (5) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;
- (7) The court's calendar and the impact of granting a continuance on other pending trials;
- (8) Whether trial counsel is engaged in another trial;
- (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- (11) Any other fact or circumstance relevant to the fair determination of the motion or application.

#### **Rule 375.1. Motion or application to advance, specially set, or reset trial date**

**(a) [Noticed motion or application required]** A party seeking to advance, specially set, or reset a case for trial must make this request by noticed motion or ex parte application under rule 379.

**(b) [Grounds for motion or application]** The request may be granted only upon an affirmative showing by the moving party of good cause based on a declaration served and filed with the motion or application.

#### **Rule 379. Ex parte applications and orders**

**(a) [Ex parte application]** An ex parte application for an order must be accompanied by an

affidavit or a declaration showing:

- (1) that, within the applicable time period under (b), the applicant informed the opposing party when and where the application would be made; or
- (2) that the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or
- (3) that, for reasons specified, the applicant should not be required to inform the opposing party.

**(b) [Time of notice; time of notice in unlawful detainer proceedings]** A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice. A party seeking an ex parte order in an unlawful detainer proceeding may provide shorter notice provided that the notice given is reasonable.

**(c) [Filing and presentation of the ex parte application]** The clerk must not reject an ex parte application for filing and must promptly present the application to the appropriate judicial officer for consideration, notwithstanding the failure of an applicant to comply with the notification requirements in (b).

**(d) [Contents of application]**

- (1) An ex parte application for an order must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of such party if known to the applicant.
- (2) If an ex parte application for an order has been made to the court and has been refused in whole or in part, any subsequent application of the same character or for the same relief, although made upon an alleged different state of facts, must include a full disclosure of any previous applications and the court's actions.

**(e) [Contents of notice and declaration regarding notice]**

- (1) When notice of an ex parte application is given, the person giving notice must state with specificity the nature of the relief to be requested and the date, time, and place for the presentation of the application, and must attempt to determine whether the opposing party will appear to oppose the application.
- (2) Every ex parte application must be accompanied by a declaration regarding notice that states:

- (A) the notice given, including the date, time, manner, and name of the party

informed, the relief sought, any response, and whether opposition is expected; or

(B) why notice should not be required.

(3) If notice was provided later than 10:00 a.m. the court day before the ex parte appearance, the declaration regarding notice must explain:

(A) the exceptional circumstances that justify the shorter notice, or

(B) in unlawful detainer proceedings, why the notice given is reasonable.

**(f) [Required documents]** An ex parte application must be in writing and include all of the following:

(1) An application containing the case caption and stating the relief requested;

(2) A declaration in support of the application making the factual showing required under (g);

(3) A competent declaration based on personal knowledge of the notice given under (e);

(4) A memorandum of points and authorities; and

(5) A proposed order.

**(g) [Affirmative factual showing required]** An applicant must make an affirmative factual showing in a declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.

**(h) [Service of papers]** Parties appearing at the ex parte hearing must serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing may be conducted unless such service has been made.

**(i) [Personal appearance requirements]** An ex parte application will be considered without a personal appearance of the applicant in the following cases only:

(1) Applications to file a memorandum of points and authorities in excess of the applicable page limit;

(2) Setting of hearing dates on alternative writs and orders to show cause; and

(3) Stipulations by the parties or other orders of the court.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):  TELEPHONE NO.: _____ FAX No. (optional) _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY  <h1 style="text-align: center;">DRAFT -3</h1> <h2 style="text-align: center;">3/09/04</h2>		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PLAINTIFF: DEFENDANT:			
<table border="1" style="width: 100%;"> <tr> <td style="width: 60%; text-align: center;"> <b>REQUEST TO SET CASE FOR TRIAL — Unlawful Detainer</b>  <input type="checkbox"/> <b>Plaintiff</b>      <input type="checkbox"/> <b>Defendant</b> </td> <td style="width: 40%;">         CASE NUMBER:       </td> </tr> </table>		<b>REQUEST TO SET CASE FOR TRIAL — Unlawful Detainer</b> <input type="checkbox"/> <b>Plaintiff</b> <input type="checkbox"/> <b>Defendant</b>	CASE NUMBER:
<b>REQUEST TO SET CASE FOR TRIAL — Unlawful Detainer</b> <input type="checkbox"/> <b>Plaintiff</b> <input type="checkbox"/> <b>Defendant</b>	CASE NUMBER:		

1. I represent to the Court that all parties have been served with process and have appeared, or have had a default or dismissal entered against them. I request that this case be set for trial.
2. The premises concerning this case located at (*street address, apartment number, city, and county*):
  - a. ☐ have not been vacated. This case is entitled to legal preference under Code of Civil Procedure section 1179a.
  - b. ☐ were vacated on (*date*): \_\_\_\_\_ and there is no defendant or other person in possession of the premises.
3. A jury trial ☐ is **not** ☐ is demanded.
4. Time required for trial (*specify*): \_\_\_\_\_
5. I am not available on the following dates (*specify*): \_\_\_\_\_
6. **UNLAWFUL DETAINER ASSISTANT** (*Bus. & Prof. Code §§ 6400-6415*). An **unlawful detainer assistant** ☐ did **not** ☐ did for compensation give advice or assistance with this form. (*If declarant has received **any** help or advice for pay from an unlawful detainer assistant, state*): \_\_\_\_\_
  - a. Assistant's name: \_\_\_\_\_ b. Telephone No.: \_\_\_\_\_
  - c. Street address, city and ZIP: \_\_\_\_\_
  - d. County of registration: \_\_\_\_\_ e. Registration No.: \_\_\_\_\_ f. Expires on (*date*): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- An unlawful detainer case must be set for trial on a date not later than 20 days after a request to set case for trial is made (Code Civ. Proc., § 1170.5(a)).
- If a jury is requested, \$150 must be deposited with the court five days before trial (Code Civ. Proc. § 631).
- Court reporter and interpreter services vary. Check with the court, including fees.

SHORT TITLE:

CASE NUMBER:

**PROOF OF SERVICE BY MAIL**  
**REQUEST TO SET CASE FOR TRIAL — Unlawful Detainer**

**Instructions:** *After having all parties served by mail with the Request to Set Case for Trial – Unlawful Detainer, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Request to Set Case for Trial – Unlawful Detainer and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.*

1. I am over the age of 18 and **not a party to this case**. I am a resident of or employed in the county where the mailing took place.  
My residence or business address is (*specify*):
  
2. I served the *Request to Set Case for Trial – Unlawful Detainer* by enclosing a copy in an envelope addressed to each person whose name and address is shown below and depositing the sealed envelope in the United States mail with the postage fully prepaid.  
  - (1) Date mailed:
  - (2) Place mailed (*city and state*):
  
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:  
Date:

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 (TYPE OR PRINT NAME)

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 (SIGNATURE OF PERSON COMPLETING THIS FORM)

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

4. a. Name of person served:
- b. Address (*number, street, city, and ZIP*):
  
- c. Name of Person served:
- d. Address (*number, street, city, and ZIP*):
  
- e. Name of Person served:
- f. Address (*number, street, city, and ZIP*):
  
- g. Name of Person served:
- h. Address (*number, street, city, and ZIP*):
  
- i. Name of Person served:
- j. Address (*number, street, city, and ZIP*):
  
- k. ☐ List of names and addresses continued on Attachment 4k (form MC-025).